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JAN 22 1999

January 22, 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, N.W., TW-A325
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 98-147;
Deployment of Wireline Services Offering Advanced
Capability

Dear Ms. Salas:

Enclosed please find for placement on the public record in the above-captioned proceeding, two copies of my letter to Lawrence Strickling, Chief of the Common Carrier Bureau, dated January 21, 1999. The letter endorses efforts by Montana Public Service Commissioner Bob Rowe to engage the Federal Communications Commission in discussion on issues related to implementation of Section 706 of the Telecommunications Act of 1996. It also reiterates the Alliance for Public Technology's recommendation that the Commission convene a joint board of federal and state regulators to develop policies addressing implementation issues. Finally, the letter expresses concern about the separate subsidiary proposal set forth in the notice of proposed rulemaking and offers an alternative approach, which affords the Commission flexibility in its use of such subsidiaries.

Sincerely,

Maureen A. Lewis
Maureen A. Lewis

General Counsel

Enclosures

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January 21, 1999

DELIVERED BY HAND

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

RECEIVED
JAN 22 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte – Deployment of Wireline Services Offering
Advanced Capability, CC Docket No. 98-147

Dear Mr. Strickling:

I understand that Commissioner Bob Rowe of the Montana Public Service Commission has recently requested the FCC's views on issues raised by representatives of AT&T, CompTel, MCI-WorldCom and Qwest in a letter to him dated January 8, 1999 on the separate subsidiary proposal in CC Docket No. 98-147. He seeks the information as the basis for further discussion between federal and state regulators. The January 8th correspondence suggested that NARUC convene such a discussion before the Commission's rumored January 28th consideration of the separate subsidiary proposal. The Alliance for Public Technology (APT) strongly endorses these efforts to generate discussion of the shared obligations of state and federal regulators to implement Section 706 of the Telecommunications Act of 1996. Accordingly, we renew our recommendation that the Commission convene an ongoing federal-state joint board.


APT initially proposed such a board to enable the FCC and state commissioners to develop policies supporting partnerships between telecommunications service providers and community based organizations. Under APT's approach set forth last year in its petition requesting implementation of Section 706,¹ the partners would develop applications for advanced telecommunications services that

¹ See Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, Docket No. RM-9244, February 18, 1998 at 34-41.

the local loop and collocation space. We believe that this more flexible approach will enable the Commission to dispense with separate subsidiaries in favor of integrated ILEC operations if necessary to encourage the timely, widespread advanced network deployment envisioned by Congress when it enacted Section 706.

The states, however, have an equally important role in ensuring that the goals of Section 706 are met. APT is pleased that Commissioner Rowe has suggested a continuing dialogue between state and federal regulators on Section 706 implementation issues, including the separate subsidiary proposal raised in the January 8th letter. In our view, APT's recommendation for a joint board provides a viable mechanism for the intergovernmental exchange necessary to achieve Section 706's goal that high capacity networks reach all Americans. Therefore, we urge the Commission to convene a joint board to enable the states and the Commission together to remove regulatory barriers to infrastructure investment and enact proactive policies, such as APT has suggested, to stimulate such investment.

Sincerely,


Maureen A. Lewis
General Counsel

cc: Chairman William Kennard
Commissioner Susan Ness
Commissioner Gloria Tristani
Commissioner Michael Powell
Commissioner Harold Furchtgott-Roth
The Honorable Bob Rowe, Montana Public Service Commission

address critical needs of local residents. These applications would in turn stimulate demand in traditionally underserved communities. By aggregating demand for telecommunications services, these communities could then attract infrastructure investment from providers that had overlooked their potential as viable markets.

While APT continues to suggest the federal-state joint board for this purpose, we applaud Commissioner Rowe for previously suggesting a broader mandate for such a board.² We also support his attempts to explore with the Commission the consequences to the states of the FCC's plan to permit ILECs to offer advanced data services through unregulated structurally separate subsidiaries. The issues that AT&T, CompTel, MCI-WorldCom, and Qwest have raised with him are important. They highlight the need for close coordination between the state and federal regulators who share responsibility for implementing Section 706.

Like the authors of the January 8th letter to Commissioner Rowe, APT fears that the separate subsidiary proposal, as written, may not result in the ubiquitous deployment of high capacity networks. As the company representatives point out, the current proposal provides incentives for ILECs to use unregulated affiliates to offer data services to high volume customers. These customers frequently enjoy the attention of competing carriers. Other users, by contrast, are not so prized and will likely find themselves relegated to the "old" regulated telephone network, which may well deteriorate into obsolescence unless investment enticements exist. Robust private data networks developing at the expense of the public switched network could mean that millions of residential, low income, elderly, rural and disabled people may never experience the life enhancing benefits of advanced telecommunications services. To curtail the growing "digital divide" between consumers with access to advanced technologies and those without, APT implores the Commission to monitor closely whether ILEC data subsidiaries are deploying advanced networks that reach everyone. If monitoring shows otherwise, then APT recommends that the Commission permit ILECs to use the scope and scale of integrated operations to deliver broadband services to all Americans.

Presently, the separate subsidiary proposal provides the only option for ILECs to avoid unbundling elements of their advanced networks and reselling them at wholesale rates under Section 251 (c) of the 1996 Act. In response to the Commission's notice of inquiry in CC Docket No. 98-146, both cable and ILEC industry representatives cautioned that unbundling and resale obligations deter infrastructure investment.³ Therefore, APT is gravely concerned that the Commission's exclusive reliance on the separate subsidiary proposal to limit applicability of Section 251 prevents the agency from responding as circumstances dictate. For this reason, APT has suggested that the Commission exercise the discretion afforded it under Section 251(d)(2) to exclude advanced network elements from unbundling and wholesale resale mandates, so long as ILECs provide competitors with equitable access to

² See Telecommunications Reports, Vol. 64, No. 42 dated October 19, 1998 at 12

³ See e.g., Comments of the National Cable Television Association in CC Docket No. 98-146, dated September 14, 1998 at 24-25; Comments of Bell Atlantic in CC Docket No. 98-146, dated September 14, 1998 at 14.